

NOTICE

The Supreme Judicial Court's Standing Advisory Committee on the Rules of Civil Procedure invites comments on a proposed amendments to Rules 26 and 37 of the Massachusetts Rules of Civil Procedure.

The proposed amendments to Rule 26 include a new section 26(b)(5), Disclosure of Expert Testimony. Paragraph (B) of this section requires, unless otherwise stipulated or ordered by the court, that a party include with its disclosure of expert trial witnesses required by Paragraph (A) a written report prepared and signed by the expert, containing the information listed in the rule. The requirement for a written report would apply only to an expert witness who is retained or specially employed to provide expert testimony in the case or whose duties as the party's employee regularly involve giving expert testimony. In the case of expert witnesses who are not required to provide a written report, the disclosure of expert trial witnesses must include information similar to that currently provided in answers to interrogatories under current Rule 26(b)(4). Drafts of reports required by the new 26(b)(5) and communications between counsel and expert witnesses are protected under proposed Rule 26(b)(4)(B) and (C). The time to disclose expert testimony is governed by proposed Rule 26(b)(5)(D). The proposed revisions to Rule 26 are modeled on the provisions of the Federal Rules of Civil Procedure.

Rule 37, Failure to Make Discovery: Sanctions, would be amended to describe the sanctions resulting from a party's failure to provide information or identify a witness as required by Rule 26.

A committee report, two separate statements, a blackline version of the amendments, and the proposed amendments appear below.

Comments on the proposed amendments or separate statements should be directed to the Standing Advisory Committee on the Rules of Civil Procedure, c/o Christine P. Burak, Supreme Judicial Court, John Adams Courthouse, One Pemberton Square, Boston MA 02108 on or before September 3, 2010. Comments may also be sent to christine.burak@sjc.state.ma.us

After reviewing the comments submitted, the Standing Advisory Committee will make its recommendations to the Supreme Judicial Court with respect to the proposed amendment.
